# Department of Air Port

**OFFICE** Board of Trade

**STATION** Calcutta

Dft. **No.** 1483

A 157

**Dated** 20th May

| | Date | Initial |
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DESPATCHED
22 MAY 1930

Ref.A3.No. 2369-30. South Kanara Collector's Office,

Mangalore, 6th May . 1930.

A 1573

RP 88.

From

G.W.Wells, Esquire, M.A., I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board, .

Land Revenue and Settlement, Madras.

Suits - South Kanara - Karkal - District Munsif's Court - O.S.No. 709/29.

I submit herewith a copy of the English translation of the Kanarese plaint in O.S.No. 709/29 on the file of the District Munsif's Court, Karkal, filed by Ignatius Colaco and two others against Ganapathi and four others including the Secretary of State for India in Council, who has been impleaded as supplemental 5th defendant together with the draft written statement prepared by the Government Vakil at Karkal and approved by the Government Pleader, Mangalore.

9-10 Colas

2. The suit is for a declaration that plots S.Nos. 116/5 and 145/6 of Prantya village, Karkal taluk, assigned in D.R. 668/35 to the 2nd defendant Durgamma, formed portion of the land already assigned in D.R. 164/1322 to the 1st defendant Ganapathi and eventually purchased by the plaintiffs at Court auction and included in the sale certificate obtained by the plaintiffs in R.E.P. 632/26 connected with O.S.No. 369/25 on the file of the District Munsif's Court, Karkal, and for the recovery of possession of the said plots and other amounts with interest due to the plaintiffs.

Code, nor have they claimed any relief against Government. As, however, the Government have been impleaded as a supplemental defendant, a written statement will have to be filed.

4. So far as the Government (5th defendant) is concerned the main point for consideration is whether plots S.Nos. 116/5 and 145/6 assigned in D.R. 668/35 on the file of the Tahsildar of Karkal really form portions of S.No. 117 originally assigned in D.R. 164/22 as contended by the plaintiffs in para 3(c) of the plaint, and not encroachments on Government land, --- absolutely at their disposal. A reference to the eye-sketch and sub-division records prepared in D.R. 164/22 would show that S.No. 112 assigned in that case and subsequently renumbered as 117 was considered to have been carved out of S.No. 83/1, but a correct plotting of this field in the hill block map of 33 shows that it actually formed portions of S.Nos. 83/3 -- (present S.No. 116) and 83/1 (present 145 and 117). In connexion with the enquiry in S.D. 336/32, a resurvey of the several -- fields carved out of hill No. 83 was made, but owing to some misconception, instead of correctly localising S.No. 117, on a reference to the records of D.R.No. 164/1322, according the state of the ground, the field appears to have been pushed --- southwards and the portions containing the house and other --- improvements of the original assignee were measured as encroachments in S.Nos. 145 and 116 and subsequently subdivided as -- 145/6 and 116/5. In D.R. 668/35 these subdivisions were at the request of Ganapathi, the so-called encroacher, who was also the original assignee of 117 (1st defendant), assigned in the name of Durgamma (2nd defendant). If while resurveying S.No. 117 were correctly localised, there would probably not have been any fresh assignment, which has now resulted in this suit. -- However, the mistake cannot now be rectified and so long as no suit notice required by section 80 of the Civil Procedure Code has been given by the plaintiffs, the suit is not sustainable as against Government.

to be filed on behalf of Government.

6. I submit herewith the connected records noted in the margin for reference.

| | |
|---|---|
| Karkal taluk | D.R.file 668/35. |
| do. | 164/22. |
| do. | S.D.file 336/32. |

7. The summons dated 14-2-30 --- posting the hearing of the suit to 18-4-30 was served on me on 22-2-30. As I found that the District Munsif allowed me only two months' time --- instead of three months, I requested him to repost the case and he writes to say that the case has been reposted to --- 20-5-30. The Government Pleader who was consulted about the written statement on 18-4-30 sent his reply on 2-5-30. The Vakil, Karkal, however informs me that he has obtained time for filing the written statement till 27-5-30.

Your obedient servant,

for Collector.

In the Court of the Dt. Munsif of Karkal.

O.S.No.709 of 1929.

Between

Ignatius Colaco and others. ... Plaintiffs.

and

Ganapathi and others. .. Defendants.

Plaint dated 27-10-29 under rules 1 to 6 of order 7 under Act V of 1908.

The plaintiffs beg to state as follows:-

1. (1) Ignatius Colaco
(2) Piad Marian Colaco
(3) Manuel Martin Colaco
Sons of Juje Colaco, Ryots, residing in Mangalore Town. — Plaintiffs.

Processes for Plaintiffs should be addressed to their Vakil.

2. (1) Ganapathi, son of Uliappa, Postman, residing in Pranthya village, Mudabidri Magne, Karkal Taluk.

(2) Durgamma, wife of Ramakrishna, Police Constable, residing with her husband in Kasargod Kasba.

(3) Venkatraya Kamthi, son of Manjunatha Kamthi, residing in the said Pranthya village.

*Plaint corrected on 9-12-29 as per orders on R.I.A.No.1286/29 filed on behalf of the plaintiffs.

(4) Co-operative Credit Society, Mudabidri, by its President Sarvotham Mallya, Patel of Marpadi village, residing in Marpadi village, Karkal Taluk.

— Defendants.

3 (a) That on the application of the 1st defendant for the assignment of some Government waste land in Pranthya village, Mudabidri egistration Sub-District in Fasli 1322 S.No.117, measuring 121 ents was carved out of hill waste 83, close to the Mudabidri-ntwal public road and assigned to him in D.R.164/1322 on the file the Tahsildar of Karkal and that he after putting up a wall the plot erecting a house, cowpen and bath shed and other uildings and planting trees and also making vast improvements, was possession and enjoyment thereof for sometime. He then ------- ortgaged the plot in the first instance to several persons and inally on 3-4-1918 to one Norbert D'Souza for Rs.150 under a simple ortgage deed. The plaintiffs got a transfer of the mortgage ight from the said Norbert D'Souza on 11-5-1919, filed a suit .S.No.369/25 against 1st defendant, obtained and purchased the aid property in Court auction held in execution R.E.P.No.632/26, ook possession thereof through the Court in R.E.A.No.401/27 of

this Court and have passed a receipt to the Court.

(b) That the said mortgage deed contains conditions to the effect that the interest of Rs.18-12-0 calculated at 12½% per annum on the principal of Rs.150/- should be paid by the 3rd of April every year and a receipt obtained therefor, that the principal should be paid on 3-4-1923 with interest on the amount for the year and the mortgage deed got back, that on the failure to pay interest on the due date every year, the arrears of interest shall also bear interest at the rate of 12½% per annum and that if the principal with interest thereo be not paid on the last due date, interest shall run on that amount at the rate of 12½% per annum and these amounts are to be paid on the security of the said property. It was for the recovery of this capital advanced, the interest thereon from 3-4-1918 and the interest on the arrears of interest which were outstanding that the said suit was filed.

(c) That as the land S.No.117, carved out of hill waste 83 in connection with D.R.164/1322 referred to above was not plotted in the map according to the state of the ground, an enquiry -S.D.336/1332 - arose by itself in the Land Records Department for furnishing plottable data and during the resurvey of the said field 83, which took place behind the back of the plaintiffs, the said land S.No.117 was pushed westwards and the land covered by the original S.No.117 formed in connection with D.R.164/1322, was again separately measured with the notations S.Nos. 145/6, measuring 70 cents, and 116/5, measuring 22 cents and wrongly considered as encroachments. In D.R.668/1335, though they were proposed to be assigned in the name of the 1st defendant, he gave a statement to the effect that they ~~(should be assigned)~~ need not be assigned in his name, but that they should be assigned in the name of the 2nd defendant and with a view to cheat plaintiffs, the 1st defendants so arranged to have it assigned in th name of the 2nd defendant, who is the wife of his uterine brother and did not deliver them to the plaintiffs. The 1st defendant is himself occupying the buildings standing on the said land and is enjoying the trees etc., contained therein. The enquiries and differences referred to above were not known to the plaintiffs at the time of the suit quoted above. Though the plaintiffs' party came to know of the differences at the time of obtaining possession of the land, they could not understand the records &c.and as such this

suit could not be filed earlier.

(d) The actions of defendants 1 and 2 are illegal, unlawful and unauthorised, besides being a cause of loss and trouble to the plaintiffs. The 2nd defendant has acquired no sort of right over the property, nor could any such right be created. The 1st defendant is not entitled to have the lands, once assigned by Government and on which he had made improvements on the authority of that assignment, to be brought out for assignment again, or to get them assigned again in the name of the 2nd defendant behind the back of the plaintiffs. As the 1st defendant got the lands assigned in the name of the 2nd defendant on his own behalf, by hiding truth and creating falsehood and as he excluded the plots from the security given for the mortgage amount due to the plaintiffs they are entitled to get them from this defendant and to take possession and enjoy them as portions of the land purchased at Court auction, or as the 1st defendant, created rights for the 2nd defendant, she is liable to be considered as the transferer of the mortgage and also to pay to the plaintiffs by the sale of the lands the amount due to them irrespective of the rights which she may claim. The plaintiffs are, therefore, obliged to sue for the following reliefs. As it is understood that the property has subsequently been mortgaged to defendants 3 and 4 and as they have power to redeem the mortgage in favour of the plaintiffs, they have been impleaded as defendants.

4. The cause of action arose in August 1927, i.e., from the date on which the plaintiffs came to know of the 1st defendant's action to cheat them in Pranthya village, within the jurisdiction of this court.

5. The value of the suit claimed is Rs.513-11-0.

6. Reliefs prayed for are -

I. To declare for the reasons set forth above, that S.Nos116/5 and 145/6 of Pranthya village in the Mudabidri Registration Sub-District are security to the judgment debt decreed in O.S.369/25 on the file of this court, that the revenue assignment got by the 1st defendant, ordered in the name of the 2nd defendant is not binding as against plaintiffs and that the plots are portions of

the property mentioned in the sale certificate granted in connection with R.E.P.No.632/26 of this court, after summoning the defendants to court and holding necessary enquiry and also to order the ------- defendants to deliver possession of the said property to the ------- plaintiffs without any objection.

| | |
|---|---|
| For purposes of court-fees ten times the assessment of Re.0-11-0 on the property comes to Rs.6-14-0 and value of buildings at Rs.25-0-0 | 31-14-0 |
| II. To direct defendants to pay plaintiffs the income from the property of Rs.36-8-0 from 11-10-26 up to date at Rs.12/- per annum with interest at the rate of 12½% per annum. | 36-8-0 |
| Total. | 68-6-0 |

or

III. To direct defendants 1 and 2 or either of them found liable, to pay plaintiffs, by the sale of the property mentioned in schedule A below, irrespective of the assignment order in favour of the 2nd defendant and the mortgages in favour of defendants 3 and 4 Rs.513-11-0 being the capital and interest in respect of the said mortgage deed, as per particulars given in schedule B with future interest at 12½% per annum.

| | |
|---|---|
| | 513-11-0 |
| Total. | 513-11-0 |

IV. To direct defendants to pay plaintiffs costs of this suit with interest from this date at Rs.6 per cent.

Such other reliefs not harmful to the plaintiffs as the court may deem fit in the circumstances of the case.

Particulars of the plaint property.

Schedule A.

Pranthya village. Mudabidri Sub-District.

| S.No. | Sub-division No. | Classification. | Extent. | Assessment. |
|---|---|---|---|---|
| 116 | 5 | Dry | 0.22 | 0-3-0 |
| 145 | | do. | 0.70 | 0-8-0 |
| | | | | 0-11-0 |

with buildings, trees etc. contained therein.

| | | | |
|---|---|---|---|
| III. | Interest due on 3-4-1920 - | 18-12-0 | |
| | do. on this from 4-4-20 up to date at 12½% | 22-11-3 | 41-7-3 |
| IV. | do. on 3-4-1921 | 18-12-0 | |
| | do. 4-4-21 do. | 20-5-3 | 39-1-3 |
| V. | do. on 3-4-22 | 18-12-0 | |
| | do. 4-4-22 do. | 17-15-3 | 36-11-3 |
| VI. | do. on 3-4-23 | 18-12-0 | |
| | do 4-4-23 do. | 15-9-3 | 34-5-3 |
| VII. | do. on 3-4-24 | 18-12-0 | |
| | do. 4-4-24 do. | 13-3-3 | 31-15-3 |
| VIII. | do. on 3-4-25 | 18-12-0 | |
| | do. 4-4-25 do. | 10-13-3 | 29-9-3 |
| IX. | do. on 3-4-26 | 18-12-0 | |
| | do. 4-4-26 do. | 8-7-3 | 27-3-3 |
| X. | do. on 3-4-27 | 18-12-0 | |
| | do. 4-4-27 do. | 6-1-3 | 24-13-3 |
| XI. | do. on 3-4-28 | 18-12-0 | |
| | do. 4-4-28 do. | 3-11-3 | 22-7-3 |
| XII. | do. on 3-4-29 | 18-12-0 | |
| | do. 4-4-29 do. | 1-5-3 | 20-1-3 |
| XIII. | Proportionate interest due from 3-4-29 up to date at the said rate | | 12-3-3 |
| | | Total. | 513-11-0 |

No documents have been produced with the plaint.

As defendants 1 to 4 plead in the written statement that the person mentioned below is a necessary party to this suit, he has been impleaded as a supplemental defendant as per orders passed on R.I.A.No.144/30 filed by ths plaintiffs. It is prayed that the suit may be heard and the reliefs prayed for granted in his presence

Supplemental defendant.

5. The Secretary of State for India in Council.

Plaint corrected as per court order on 7-2-30.

Sd/- E. Vasudevaya,
Pleader for plaintiffs.

(Translation)

6.5.30.

In the Court of the District Munsif of Karkala.

O.S.No.709/1929.

Ignatius Colaco & others . . . Plaintiffs

Vs.

Ganapathi & others . . . . Defendants.

Written statement on behalf of supplemental 5th Defendant under Order VIII, Rule 1 of C.P.Code.

The Defendant above named states as follows:-

1. His address for service of process is that of the Collector of South Kanara, and his Advocate K. S. Bhat, Karkal.

2. The Plaintiff's suit as against this Defendant is misconceived and not maintainable.

3. This Defendant is not a necessary party to the suit. No relief is claimed against him and he is not concerned in any manner with the disputes between the Plaintiffs and the other Defendants.

4. The Plaintiffs did not serve any notice as required by Section 80 C.P.C. before suing this Defendant. The suit is not, therefore, sustainable as against this Defendant.

5. This Defendant admits that Survey No.117 of Prantya village was assigned to the 1st Defendant in D.R.No.164/1322 and that the said Survey number was resurveyed with others and the correct extent determined as stated in the plaint. Notice thereof was duly served upon 1st Defendant the Pattadar, according to the Rules in force, and as no objection was received from any one, the same was sanctioned. This Defendant does not admit, however, that the whole of the plots numbered 145/6, 116/5 were included in S.No.117 and that they were not encroachments on Government land which was absolutely at its disposal.

6. This Defendant does not admit any of the plaint allegations other than those expressly admitted above and

puts Plaintiffs to the strict proof thereof.

7. In the circumstances this Defendant ought to be removed from the record with his costs, payable by the Plaintiffs or such other party as the Court deems liable.

South Kanara Collector's office,
Mangalore, 6th May 1930.

For Collector.

6.5.30

R. F. XXII-A-19.—26,004- 31-1-29 (6).

**Subject.—**

FOR MEMBER.

Suit (S. Nacca) Kachal Ofc—
No. 709/29 - Transfer Ofc - acq/n -
Alyeum - Sacchrines.

READ AGAIN B. P. No. _____, dated _____ 192

" " " _____ ; " _____ 192

READ ALSO :—

Register No. _____, From the A 1573/30, No. _____, dated _____ 192

" " _____, " " _____, " _____, " _____ 192

" " _____, " " _____, " _____, " _____ 192 .

RESOLUTION. (Rlg) No. 1483, dated 20 : 5 . 1930

The Board sanctions the delence of the suit and approves the draft written statement subject to the following modifications:
(i) In para 5. 2nd sentence for "pattadar" substitute "ryotwari holds" and
(ii). At the end of the same para 5. add
"If however it is found that S. Nos. 145/6 and 116/5 were included in the Rd S. No. 112 (renumbered 117)

this document has no
Reference to cancel the
assignment dated 4th Dec
6685-4

Bro,

20-5-30

To

The Edr. of N. Kaccara via
Ceylon as, 4th (Journal)

Date of Hearing 27-5-30

Suit (S.Dewa). Kamal Dfe- o.s. 709/29. Dra- ya Dfe- appl- dgence -

M1 S P(1).

A 15-7-30

To A.S

p1 r.3. cf The Collector's letter is submitted for orders.

p2 cf 2. From para 4 of Ct, it is clear that assignments of S. nos. 145/6 and 116/5- made in D.R. 668/35 are wrong In the circumstances, though no relief is claimed as

para 6. pp 6-8 cf against Government, it appears that they cannot successfully plead

para 6 IV. p 7 cf that they have no interest in the suit. It seems better to avoid the Costs are Claimed against defendants generally

p 9 cf following sentence at the end of the 8th line para 5 of the written statement

"If however it is found that 145/6 and 116/5 were included in the old S. no 112 (resurvey 117), this defendant has no objection to cancel the assignment ordered in D.R. 668/35.

14-5-30

17.7.30

para 3. p1. cf 3. In view of the notice under Sec 80 of the Civil Procedure Code, the present suit is not sustainable as against

Government. The degree of the accused may be reduced and the draft written statement subject to the modification suggested in para 2 above may be approved

14-5-30
10 cf
1975

Para 4 of the Written Statement is not strictly correct, as Govt pg cf.
Rly contend that no relief is claimed as against them (vide para 3)
opp.
in which case no notice seems necessary. The paragraph may however stand specially in view of the proposed addition to para 5

14-5-30

In para 5, 2nd Sentence for "patladar", the "holder" may be substituted

5
1975

To Rly (Legal)
Draft enclosed

20-5-30